

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**PATTY BEALL, MATTHEW  
MAXWELL, TALINA MCELHANY AND  
KELLY HAMPTON, individually  
and on behalf of all other similarly situated;**

**Plaintiffs,**



**2:08-cv-422 TJW**

**TYLER TECHNOLOGIES, INC. AND  
EDP ENTERPRISES, INC.  
Defendants.**

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT  
ON STATUTE OF LIMITATIONS AND WILLFULNESS UNDER  
THE FLSA AND BRIEF IN SUPPORT**

Defendants Tyler Technologies, Inc. and EDP Enterprises, Inc. (collectively “Tyler” or “Defendants”) file this Motion for Partial Summary Judgment on the issue of willfulness under the Federal Labor Standards Act (the “FLSA”) and, in support thereof, would respectfully show as follows:

## I. STATEMENT OF ISSUE

Whether any genuine issue of material fact precludes a finding as a matter of law that the statute of limitations should not be extended to three years because Plaintiffs cannot meet their burden of proving that Defendants acted with reckless disregard of the law in classifying Plaintiffs as exempt employees?

## II. INTRODUCTION

This is a purported collective action under 29 U.S.C. §216(b) of the FLSA wherein the named and opt-in Plaintiffs allege they were misclassified as exempt employees and improperly

denied overtime pay. After this case was conditionally certified as a collective action, approximately 73 individuals filed their consents to opt-in to this lawsuit. Currently, after the partial settlement of the claims of certain Plaintiffs, and after several other Plaintiffs elected to opt-out of the lawsuit, 30 Plaintiffs remain in the case.

The FLSA provides for a two-year statute of limitations for unpaid overtime claims. If a plaintiff can meet his/her burden to show that an FLSA violation was “willful,” then the statute extends the limitations period to three years.<sup>1</sup> Because Plaintiffs cannot show that Tyler acted willfully in classifying Plaintiffs as overtime exempt employees, Tyler respectfully moves this Court for a determination that the two-year statute of limitations applies to the claims of all Plaintiffs and that the claims of those Plaintiffs that fall outside of the two-year statute of limitations be dismissed as a matter of law.

### **III. ARGUMENTS & AUTHORITIES**

In a collective action, the limitations period continues to run as to an individual until he or she files a consent to opt-in to the collective action.<sup>2</sup> The FLSA bars any actions for unpaid overtime compensation not filed within two years after the cause of action accrues.<sup>3</sup> Under the FLSA, a cause of action accrues at each regular payday immediately following the work period during which the services were rendered for which the overtime compensation is claimed.<sup>4</sup> If a plaintiff can prove that a violation of the FLSA was willful, the statute extends the limitations period from two to three years.<sup>5</sup>

To receive the benefit of the three-year statute of limitations, a plaintiff must show that the

---

<sup>1</sup> 29 U.S.C. § 225(a).

<sup>2</sup> *Cash v. Conn Appliances, Inc.*, 2 F. Supp. 2d 884, 897 (E.D. Tex. 1997).

<sup>3</sup> 29 U.S.C. § 225(a).

<sup>4</sup> *Halferty v. Pulse Drug Co.*, 821 F.2d 261, 271 (5th Cir. 1987).

<sup>5</sup> 29 U.S.C. § 225(a).

employer's actions were "willful" by establishing "that the employer either knew or showed reckless disregard as to whether its conduct was prohibited by..." the FLSA.<sup>6</sup> To prevail on summary judgment as to willfulness, Tyler "need only point the court to the absence of evidence" that its actions were willful.<sup>7</sup>

A failure to seek legal advice regarding an employer's pay practices does not constitute a willful violation of the FLSA.<sup>8</sup> A negligent violation of the FLSA does not constitute a willful violation.<sup>9</sup> Also, in misclassification cases, evidence that employees complained about working more than 40 hours per week "does not raise a genuine issue of material fact as to defendants' intentional or reckless disregard for the matter of whether its conduct was prohibited by the FLSA."<sup>10</sup> Similarly, an employer's mere knowledge that its employees worked more than 40 hours per week does not raise a genuine issue of material fact as to whether the employer acted with intentional or reckless disregard of the FLSA.<sup>11</sup>

Tyler's motion for summary judgment should be granted because there is no evidence to support Plaintiffs' claims that Tyler acted willfully. As such, Plaintiffs' claims are governed by the FLSA's two-year statute of limitations, and the claims of those Plaintiffs who fall outside of this limitations period should be dismissed.

An example of how courts analyze the issue of willfulness at the summary judgment stage is *Dennington v. Brinker International Payroll Co.*<sup>12</sup> In *Dennington*, the court granted Brinker's motion for summary judgment because the plaintiff could not point to evidence that

<sup>6</sup> *Cox v. Brookshire Grocery Co.*, 919 F.2d 354, 356 (5th Cir. 1990).

<sup>7</sup> *Dennington v. Brinker Int'l Payroll Co.*, No. 3:09-CV-1489-D, 2010 U.S. Dist. LEXIS 116890, at \*5 (N.D. Tex. Nov. 3, 2010).

<sup>8</sup> *Mireles v. Frio Foods*, 899 F.2d 1407, 1416 (5th Cir. 1990).

<sup>9</sup> *Id.*

<sup>10</sup> *Edwards v. Alta Colls., Inc.*, No. SA-03-CA-0538 OG (NN), 2005 U.S. Dist. LEXIS 3753, at \*46 (W.D. Tex. Feb. 28, 2005) (the employer's summary judgment motion was granted as to the issue of willfulness and the court imposed the FLSA's 2-year limitations period).

<sup>11</sup> *Id.* at \*47.

<sup>12</sup> *Dennington*, 2010 U.S. Dist. LEXIS 116890.

Brinker acted willfully.<sup>13</sup> In support of its motion, Brinker simply pointed out the absence of any evidence of willfulness.<sup>14</sup> Attempting to survive Brinker's summary judgment motion, the plaintiff argued that "the determination of willfulness is a fact issue and should, therefore, be submitted to a jury."<sup>15</sup> The court held that the plaintiff could not "defeat summary judgment simply by making this assertion. He must produce *evidence* that creates a genuine fact issue, i.e., proof that would enable a reasonable jury to find in his favor on this issue."<sup>16</sup> The court concluded that Brinker was "only required at the summary judgment stage to point to the absence of evidence of a willful violation."<sup>17</sup> Accordingly, the court granted Brinker's motion.<sup>18</sup>

Similarly, Tyler's motion for summary judgment should be granted because Plaintiffs cannot point to evidence that Tyler acted with reckless or intentional disregard of whether its classification of Plaintiffs as exempt employees was prohibited by the FLSA. The Plaintiffs identified in the table below should be dismissed from this action because the entirety of their claims fall outside of the two-year limitations period. The claims of unpaid overtime compensation for the remaining Plaintiffs should be limited only to those claims that fall within the two-year limitations period. Any claims for unpaid overtime compensation that fall outside of the two-year limitations period should be barred as a matter of law.

---

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at \*5.

<sup>15</sup> *Id.* at \*7.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at \*8.

**IV.**  
**STATEMENT OF UNDISPUTED FACTS**

<b>Plaintiff</b>	<b>Date Consent to Opt in Was Filed</b>	<b>Date Before Which Claims are Barred<sup>19</sup></b>	<b>Dates of Employment</b>
Joy Bibles	4/6/09 <sup>20</sup>	4/6/07	9/21/2005 <sup>21</sup> to 10/13/2006 <sup>22</sup>
Geraldine Ingram	7/31/09 <sup>23</sup>	7/31/07	1/3/2006 <sup>24</sup> to 11/2006 <sup>25</sup>
Bethany Maynard	7/27/09 <sup>26</sup>	7/27/07	12/2002 to 3/2007 <sup>27</sup>
Lisa White	4/6/09 <sup>28</sup>	4/6/07	2/16/2004 to 2/28/2007 <sup>29</sup>
Eyvonne Wilton	8/13/09 <sup>30</sup>	8/13/07	3/13/2006 <sup>31</sup> to 1/12/2007 <sup>32</sup>

**V.**  
**CONCLUSION**

There is no evidence that Tyler acted in reckless disregard of the law by classifying Plaintiffs as exempt employees. Therefore, the two-year statute of limitations under the FLSA applies to this action and the claims of the Plaintiffs that fall outside of the two-year limitations period are barred as a matter of law. Accordingly, Tyler respectfully requests this Court to grant its motion for summary judgment and dismiss the claims of Plaintiffs Bibles, Ingram, Maynard, White and Wilton in their entirety and dismiss them from this lawsuit. Additionally, Tyler respectfully requests this Court to hold that claims of the remaining Plaintiffs for overtime compensation are barred if they fall outside of the two-year limitations period.

---

<sup>19</sup> Based on a two-year limitations period.

<sup>20</sup> See Dkt. No. 17-13, Bibles's consent to opt-in.

<sup>21</sup> See Exh. A, offer letter for Bibles.

<sup>22</sup> See Exh. B, separation letter for Bibles.

<sup>23</sup> See Dkt. No. 50-1, p. 2 of 3, Ingram's consent to opt-in.

<sup>24</sup> See Exh. C, offer letter for Ingram.

<sup>25</sup> See Exh. D, Ingram dep. p. 12:21-23.

<sup>26</sup> See Dkt. No. 46-1, Maynard's consent to opt-in.

<sup>27</sup> See Exh. E, Maynard dep. pp. 6:25-7:5.

<sup>28</sup> See Dkt. No. 17-16, White's consent to opt-in.

<sup>29</sup> See Dkt. No. 18 -11, Declaration of Lisa White.

<sup>30</sup> See Dkt. No. 58-1, Wilton's consent to opt-in.

<sup>31</sup> See Exh. F, Wilton's dep. p. 116:18-21.

<sup>32</sup> See Exh. G, separation letter for Wilton.

Respectfully submitted:

/s/ Paulo B. McKeeby

Paulo B. McKeeby

Texas Bar No.: 00784571

[paulo.mckeeby@morganlewis.com](mailto:paulo.mckeeby@morganlewis.com)

Joel S. Allen

Texas Bar No.: 00795069

[joel.allen@morganlewis.com](mailto:joel.allen@morganlewis.com)

Ellen L. Perlioni

Texas Bar No. 00794155

[ellen.perlioni@morganlewis.com](mailto:ellen.perlioni@morganlewis.com)

Farin Khosravi

Texas Bar No. 24043753

[farin.khosravi@morganlewis.com](mailto:farin.khosravi@morganlewis.com)

MORGAN, LEWIS & BOCKIUS LLP

1717 Main Street, Suite 3200

Dallas, Texas 75201-7347

phone - 214.466.4000

facsimile - 214.466.4001

Deron R. Dacus

Texas Bar No.: 00790553

[derond@rameyflock.com](mailto:derond@rameyflock.com)

RAMEY & FLOCK P.C.

100 East Ferguson, Suite 500

Tyler, Texas 75702

phone – 903.597.3301

facsimile – 903.597.2413

ATTORNEYS FOR DEFENDANTS  
TYLER TECHNOLOGIES, INC. AND  
EDP ENTERPRISES, INC.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above and foregoing has been served via the Court's ECF system on this 30th day of December, 2010, as follows:

John D. Sloan, Jr.  
Laureen F. Bagley  
SLOAN, BAGLEY, HATCHER &  
PERRY LAW FIRM  
101 East Whaley Street  
P.O. Drawer 2909  
Longview, Texas 75606  
[jsloan@texttrialfirm.com](mailto:jsloan@texttrialfirm.com)  
[lbagley@sloanfirm.com](mailto:lbagley@sloanfirm.com)

John P. Zelbst  
Chandra L. Homes Ray  
Zelbst, Holmes & Butler  
PO Box 365  
Lawton, OK 73502  
[zelbst@zelbst.com](mailto:zelbst@zelbst.com)  
[chandra@zelbst.com](mailto:chandra@zelbst.com)

Alexander R. Wheeler  
Jason Paul Fowler  
R. REX PARRIS LAW FIRM  
42220 10th Street West, Suite 109  
Lancaster, CA 93534  
[awheeler@rrexparris.com](mailto:awheeler@rrexparris.com)  
[jfowler@rrexparris.com](mailto:jfowler@rrexparris.com)

James E. Wren  
One Bear Place #97288  
Waco, TX 76798  
[James\\_Wren@baylor.edu](mailto:James_Wren@baylor.edu)

/s/ Paulo B. McKeeby

Paulo B. McKeeby  
Ellen L. Perlioni  
Farin Khosravi